

City of Detroit

CITY COUNCIL

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ANNE MARIE LANGAN
DEPUTY DIRECTOR
(313) 224-1078

TO: COUNCIL MEMBERS

FROM: Irvin Corley, Jr., Director

DATE: April 28, 2009

RE: Resolution Approving a Continuing Disclosure Agreement with respect to the Series 2001 and 2003 Variable Rate Sewerage Bonds
(Recommend Approval) Line Item 2 on Today's New Business Agenda

Currently, the Series 2001 and 2003 variable rate sewerage bonds are supported by interest rate Swap agreements allowing the City's Department of Water and Sewerage Department (DWSD) to pay a synthetic fixed rate on the bonds. But the City's recent downgrades from rating agencies have hurt the liquidity of bonds associated with interest rate Swap agreements and the ability to remarket them.

As a result, Joseph Harris, Chief Financial Officer, wishes to remarket the sewerage bonds as true fixed rate bonds to save on interest costs and eliminate the volatility of the bonds in the bond markets. However, the lateness of the City's CAFRs has also made it difficult to remarket these bonds.

To address the late CAFR issue, Mr. Harris is requesting that your Honorable Body approve the attached resolution that would allow the City to enter into a new continuing disclosure agreement with respect to any new fixed rate 2001 and 2003 sewerage bonds and no longer subject them to the existing master continuing disclosure agreement put in place in 1995 that requires that audited financial information of the City, or the CAFR, be made available in 180 days of fiscal year end for Securities and Exchange Commission (SEC) financial disclosure purposes.

The new continuing disclosure agreement would give the City 270 days after fiscal year end to file a CAFR for disclosure purposes beginning July 1, 2009. This feature makes it easier for the Finance Director to remarket the 2001 and 2003 variable rate bonds as true fixed bonds in the current market place since the City is improving its ability to issue its CAFR on a timelier basis.

We recommend approval of the attached resolution.

Attachment

cc: Council Divisions
Auditor General's Office
Joseph Harris, Chief Financial Officer
Pamela Scales, Budget Director
Arese Robinson, Mayor's Office

ICJ:\CORLEY\Sewerage 2001 & 2003 Variable Rate Bonds.doc

April 21, 2009

Honorable City Council:

RE: Resolution Approving a Continuing Disclosure Agreement with Respect to City of Detroit, Michigan Sewage Disposal System Senior Lien Revenue Refunding Bonds (Modal Fixed Rate), Series 2001(C-1) and Sewage Disposal System Senior Lien Revenue Bonds (Modal Fixed Rate), Series 2003(B)

The City adopted a Master Continuing Disclosure Agreement in November 1995 applicable to all Sewage System bonds by a resolution of the City Council.

Although it was anticipated at the time of issuance of the Variable Rate Bonds in 2001 and 2003, that upon conversion the Fixed Rate Bonds would be subject to the Master Continuing Disclosure Agreement, it is now in the City's best interests to enter into a new continuing disclosure agreement with respect to the Fixed Rate Bonds rather than make them subject to the Master Continuing Disclosure Agreement.

It is anticipated that the conversion from variable rate to fixed rate bonds will occur in early May. Bond Counsel has prepared the attached Resolution and I recommend its adoption by your Honorable Body, with waiver of reconsideration, at your next formal session.

Respectively submitted,


Joseph L. Harris
Finance Director

JLH/dc

Cc: Londell Thomas
Irvin Corley
Patricia Luckett
David Whitaker

A Resolution Approving a Continuing Disclosure Agreement with Respect to City of Detroit, Michigan Sewage Disposal System Senior Lien Revenue Refunding Bonds (Modal Fixed Rate), Series 2001(C-1) and Sewage Disposal System Senior Lien Revenue Bonds (Modal Fixed Rate), Series 2003(B)

WHEREAS, the City of Detroit, Michigan (the "**City**"), pursuant to Ordinance No. 27-86, as amended and supplemented, and Ordinance No. 18-01, which amended and restated Ordinance No. 27-86 (collectively, the "**Bond Ordinance**"), issued its Sewage Disposal System Senior Lien Revenue Refunding Bonds (Variable Rate Demand), Series 2001(C-1) and its Sewage Disposal System Senior Lien Revenue Bonds (Variable Rate Demand), Series 2003(B) (collectively, the "**Variable Rate Bonds**") to finance or refinance the costs of acquiring and constructing repairs, extensions and improvements to the City's Sewage Disposal System (the "**System**"); and

WHEREAS, the Variable Rate Bonds are payable from the Net Revenues (as defined in the Bond Ordinance) of the System and secured by a statutory lien upon the whole of the Net Revenues; and

WHEREAS, the Variable Rate Bonds were exempt from the continuing disclosure requirements contained in Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (17 CFR Part 240), §240.15c2-12 (the "**Rule**"), which provides that an underwriter shall not purchase or sell state or local government bonds in a primary offering on or after July 3, 1995 unless the underwriter has reasonably determined that the issuer has undertaken to provide certain financial information and other material operating data with respect to the issuer and notices of certain specified events; and

WHEREAS, pursuant to the Rule, the City adopted a Master Continuing Disclosure Agreement (the "**Master Continuing Disclosure Agreement**") which is applicable to all System bonds made subject thereto by a resolution of the City Council of the City (the "**Council**"); and

WHEREAS, the City intends to remarket the Variable Rate Bonds in the Modal Fixed Rate Mode (as defined in the applicable Variable Rate Mode Supplement and Agreement entered into in connection with the issuance of the Variable Rate Bonds), hereinafter referred to as the "**Fixed Rate Bonds**"; and

WHEREAS, the Fixed Rate Bonds will be subject to the Rule; and

WHEREAS, although it was anticipated at the time of issuance of the Variable Rate Bonds, that upon conversion the Fixed Rate Bonds would be subject to the Master Continuing Disclosure Agreement, the Finance Director has determined that it is now in the City's best interests to enter into a new continuing disclosure agreement with respect

to the Fixed Rate Bonds rather than make them subject to the Master Continuing Disclosure Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL THAT:

Section 1. Approval of Continuing Disclosure Agreement. The Continuing Disclosure Agreement with Respect to City of Detroit, Michigan Sewage Disposal System Senior Lien Revenue Refunding Bonds (Modal Fixed Rate), Series 2001(C-1) and Sewage Disposal System Senior Lien Revenue Bonds (Modal Fixed Rate), Series 2003(B) (the ***"Continuing Disclosure Agreement"***), substantially in the form attached as Exhibit A hereto, with such changes, omissions, insertions and revisions as the Mayor, the Finance Director or the Director of the Department of Water and Sewerage of the City (each, including anyone acting in such position in an interim or an acting capacity, an ***"Authorized Representative"***) shall deem advisable or appropriate and not materially adverse to the City, is authorized and approved for execution on behalf of the City. Any Authorized Representative is authorized to execute the Continuing Disclosure Agreement.

Section 2. Effective Date. This Resolution shall take effect immediately upon its adoption.

**EXHIBIT A
FORM OF
CONTINUING DISCLOSURE AGREEMENT RELATING TO
CITY OF DETROIT, MICHIGAN SEWAGE DISPOSAL SYSTEM**

**SENIOR LIEN REVENUE REFUNDING BONDS
(MODAL FIXED RATE), SERIES 2001(C-1)
AND
SEWAGE DISPOSAL SYSTEM SENIOR LIEN REVENUE BONDS
(MODAL FIXED RATE), SERIES 2003(B)**

This Continuing Disclosure Agreement of the City of Detroit, Michigan (the ***“Undertaking”***), dated the date below written, is executed and delivered in connection with the remarketing in the Modal Fixed Rate Mode of the above-captioned bonds (the ***“Bonds”***).

The City of Detroit, Michigan (the ***“City”***) covenants and agrees as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1. **Definitions.** Whenever used in this Undertaking, capitalized terms not defined herein shall have the meanings assigned thereto in the Bond Ordinance. Except when otherwise indicated by the context, the following terms when used in this Undertaking shall have the following meanings:

(a) **“Annual Financial Information”** means, collectively:

(1) Financial information or operating data with respect to each Fiscal Year of the System (beginning with the Fiscal Year ended June 30, 2008), of the types included in tabular form in the Remarketing Circular as follows:

(i) in the sections entitled “THE SEWAGE DISPOSAL SYSTEM,” “FINANCIAL OPERATIONS,” (excluding any projections included therein) and “FINANCIAL PROCEDURES” (excluding the rate comparison information);

(ii) actual data comparable to the projections contained in the section entitled “THE CAPITAL IMPROVEMENT PROGRAM;” and

(iii) actual data comparable to the projections contained in APPENDIX A – FEASIBILITY REPORT in the sections entitled “Projections of Revenue” and “Operation and Maintenance Expense Projections;”

(2) Any additional information with respect to the information regarding amendments to this Undertaking required pursuant to Sections 4.2(c) and (d) of this Undertaking; and

- (3) Financial statements as specified in Section 2.2(a) of this Undertaking.

The descriptions contained in Section 1.1(a) hereof of financial information and operating data constituting Annual Financial Information are of general categories of financial information and operating data. When such descriptions include information that no longer can be generated because the operations to which it related have been materially changed or discontinued, a statement to that effect shall be provided in lieu of such information. Any Annual Financial Information containing modified financial information or operating data shall explain, in narrative form, the reasons for the modification and the impact of the modification on the type of financial information or operating data being provided.

(b) **“Audited General Purpose Financial Statements”** means audited general purpose financial statements (currently prepared as the City’s Comprehensive Annual Financial Report), if any, of the City, audited by such independent public accountants as shall then be required or permitted by City ordinance or the Bond Ordinance. Audited General Purpose Financial Statements shall be prepared in accordance with GAAP applied on a consistent basis; provided, however, that the City may from time to time, in accordance with GAAP and subject to applicable federal or State legal requirements, modify the basis upon which such financial statements are prepared. Notice of any such modification shall be provided (A) beginning July 1, 2009, to the MSRB in an electronic format as prescribed by the MSRB and (B) prior to July 1, 2009, to (i) either the MSRB or each NRMSIR and (ii) the SID, if any.

(c) **“Audited Sewage Disposal Fund Financial Statements”** means annual financial statements, if any, of only the City’s Sewage Disposal Fund (not intended to present the financial position and results of operations of the City), audited by such independent public accountants as shall then be required or permitted by City ordinance or the Bond Ordinance. Such annual financial statements may be contained within the Audited General Purpose Financial Statements of the City. Audited Sewage Disposal Fund Financial Statements shall be prepared in accordance with GAAP applied on a consistent basis; *provided, however*, that the City may from time to time, modify the basis upon which such financial statements are prepared. Notice of any such modification shall be provided (A) beginning July 1, 2009, to the MSRB in an electronic format as prescribed by the MSRB and (B) prior to July 1, 2009, to (i) either the MSRB or each NRMSIR and (ii) the SID, if any.

(d) **“Beneficial Owner”** means a beneficial owner of the Bonds, as determined pursuant to the Rule.

(e) **“Bond Ordinance”** means Ordinance No. 18-01 adopted by the City Council on October 18, 2001, as from time to time supplemented and amended by subsequent ordinances and resolutions adopted by the City Council of the City.

(f) **“Fiscal Year”** means that period established by the City with respect to which its Audited Sewage Disposal Fund Financial Statements or Unaudited Sewage Disposal Fund Financial Statements, as applicable, are prepared. As of the date of this Undertaking, the City’s Fiscal Year begins on July 1 and ends on June 30 of the next calendar year.

(g) **“GAAP”** means generally accepted accounting principles, as such principles are prescribed, in part, by the Governmental Accounting Standards Board and supplemented by pronouncements of the American Institute of Certified Public Accountants and the Financial Accounting Standards Board made applicable to state and local governmental entities and in effect from time to time.

(h) **“Holders”** means the registered owners of the Bonds.

(i) **“Listed Event”** means any of the following events with respect to the Bonds:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions or events affecting the tax-exempt status of any Bonds;
- (vii) modifications to rights of Holders;
- (viii) Bond calls;
- (ix) defeasances;
- (x) release, substitution or sale of property securing repayment of the Bonds; and
- (xi) rating changes.

(j) **“Material Event”** means any Listed Event, if material.

(k) **“Material Event Notice”** means written or electronic notice of a Material Event.

(l) **“MSRB”** means the Municipal Securities Rulemaking Board established pursuant to Section 15(b)(1) of the Securities Exchange Act of 1934, as amended.

(m) **“Notice Address”** means with respect to the City:

City of Detroit
1200 City-County Building
Detroit, Michigan 48226
Attention: Finance Director

(n) **“NRMSIR”** means, at any time, a then-existing nationally recognized municipal securities information repository, as recognized from time to time by the SEC for the purposes referred to in the Rule.

(o) **“Remarketing Agent”** means one or more broker-dealers with which the City has an agreement to sell the Bonds in connection with the fixed rate remarketing thereof.

(p) **“Remarketing Circular”** means the offering document of the City with respect to the fixed rate remarketing of the Bonds.

(q) **“Rule”** means the applicable provisions of Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934, as amended (17 CFR Part 240, §240.15c2-12), as in effect on the date of this Undertaking, including any official interpretation thereof.

(r) **“SEC”** means the United States Securities and Exchange Commission.

(s) **“Securities Counsel”** means legal counsel expert in federal securities law.

(t) **“Series”** means either series of the Bonds.

(u) **“SID”** means, at any time, a then-existing state information depository, if any, as operated or designated as such by or on behalf of the State and recognized by the SEC for the purposes referred to in the Rule.

(v) **“State”** means the State of Michigan.

(w) **“Trustee”** means U.S. Bank National Association as the Trustee under the Bond Ordinance or any successor thereto.

(x) **“Unaudited General Purpose Financial Statements”** means the same as Audited General Purpose Financial Statements, except that they shall not have been audited by the independent public accountants.

(y) **“Unaudited Sewage Disposal Fund Financial Statements”** means the same as Audited Sewage Disposal Fund Financial Statements, except that they shall not have been audited by the independent public accountants.

ARTICLE II THE UNDERTAKING

Section 2.1. **Purpose.** This Undertaking is a written undertaking for the benefit of the Holders and the Beneficial Owners and is being executed and delivered solely to assist the Remarketing Agent in complying with subsection (b)(5) of the Rule. It does not address the scope of any application of Rule 10b-5 promulgated by the SEC pursuant to the Securities Exchange Act of 1934, as amended, to the Annual Financial Information or Material Event Notices provided or required to be provided by the City pursuant to this Undertaking.

Section 2.2. **Annual Financial Information.** (a) The City shall provide Annual Financial Information with respect to each Fiscal Year (A) beginning July 1, 2009, to the MSRB in an electronic format as prescribed by the MSRB and (B) prior to July 1, 2009, to (i) either the MSRB or each NRMSIR and (ii) the SID, if any, by no later than 270 days after the end of such Fiscal Year. The Annual Financial Information shall include the Audited Sewage Disposal Fund Financial Statements for the immediately preceding Fiscal Year, if available. If such Audited Sewage Disposal Fund Financial Statements are not available, in that event the annual Financial Information shall include the Unaudited Sewage Disposal Fund Financial Statements for such Fiscal Year. In the event that no Sewage Disposal Fund Financial Statements are prepared for a given Fiscal Year, then the Annual Financial Information for such Fiscal Year shall include the Audited General Purpose Financial Statements (or the Unaudited General Purpose Financial Statements if the Audited General Purpose Financial Statements are not available).

(b) The City shall provide, in a timely manner, notice of any failure by it to provide Annual Financial Information to the MSRB in an electronic format as prescribed by the MSRB, on or before the date required by Section 2.2(a) hereof, to the MSRB in an electronic format as prescribed by the MSRB, with a copy to the Trustee.

Section 2.3. **Audited Financial Statements.** If not provided as part of Annual Financial Information by the date required by Section 2.2(a) hereof, the City shall provide Audited Sewage Disposal Fund Financial Statements (or Audited General Purpose Financial Statements if no Sewage Disposal Fund Financial Statements are prepared for such Fiscal Year), when and if available, to the MSRB in an electronic format as prescribed by the MSRB.

Section 2.4. **Other Obligated Persons.** With respect to any wholesale customer of the System that is an obligated person for whom financial information or operating data is presented in the Remarketing Circular, as determined pursuant to the Rule, the City shall provide or cause to be provided:

(a) (A) beginning July 1, 2009, to the MSRB in an electronic format as prescribed by the MSRB and (B) prior to July 1, 2009, to (i) either the MSRB or each NRMSIR and (ii) the SID, if any, annual financial information of such obligated person

of the type included in the Remarketing Circular with respect to such obligated person within 270 days after the end of the obligated person's fiscal year;

(b) (A) beginning July 1, 2009, to the MSRB in an electronic format as prescribed by the MSRB and (B) prior to July 1, 2009, to (i) either the MSRB or each NRMSIR and (ii) the SID, if any, financial statements of such obligated person, audited in accordance with GAAP, within 270 days after the end of the obligated person's fiscal year or, if not then available, when and if available; and

(c) in a timely manner (A) beginning July 1, 2009, to the MSRB in an electronic format as prescribed by the MSRB and (B) prior to July 1, 2009, to (i) either the MSRB or each NRMSIR and (ii) the SID, if, with a copy to the Trustee, notice of any failure to provide the above-referenced information.

Section 2.5. **Material Event Notice.** The City shall provide, in a timely manner, a Material Event Notice (A) beginning July 1, 2009, to the MSRB in an electronic format as prescribed by the MSRB with a copy to the Trustee, and (B) prior to July 1, 2009, to (i) either the MSRB or each NRMSIR and (ii) the SID, if any, with a copy to the Trustee. Each Material Event Notice shall be so captioned and shall prominently state the title, date and CUSIP numbers of the applicable Bonds. *Notwithstanding the foregoing*, a Material Event Notice of Listed Events described in items (viii) and (ix) of the above definition of the term "Listed Events" need not be given under this Undertaking any earlier than, if applicable, the date notice is required to be given to Holders of the Bonds pursuant to the resolution of the City Council authorizing the issuance of such Bonds.

Section 2.6. **Additional Information.** Nothing in this Undertaking shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Undertaking or any other means of communication, or including any other information in any Annual Financial Information or notice of occurrence of a Material Event, in addition to that which is required by this Undertaking. If the City chooses to include any information in any Annual Financial Information or notice of occurrence of a Material Event in addition to that which is specifically required by this Undertaking, the City shall have no obligation under this Undertaking to update such information or include such information in any future Annual Financial Information or notice of occurrence of a Material Event.

ARTICLE III OPERATING RULES

Section 3.1. **Fiscal Year.** Annual Financial Information shall be provided at least annually, *notwithstanding* any Fiscal Year longer than 12 calendar months. The City shall promptly notify (A) beginning July 1, 2009, the MSRB in an electronic format as prescribed by the MSRB and the Trustee, and (B) prior to July 1, 2009, the SID, if any, the Trustee and either each NRMSIR or the MSRB, of each change in its Fiscal Year.

Section 3.2. **Incorporation by Reference.** It shall be sufficient for purposes of Section 2.2 hereof if the City provides Annual Financial Information by specific reference to documents previously either (A) beginning July 1, 2009, provided to the MSRB's Internet Web site or (ii) filed with the SEC, and (B) prior to July 1, 2009, (i) provided to each NRMSIR existing at the time of such reference and the SID, if any, or (ii) filed with the SEC. If such a document is a final official statement within the meaning of the Rule, it also must be available from the MSRB.

Section 3.3. **Submission of Information.** Annual Financial Information may be provided in one document or multiple documents, and at one time or in part from time to time. All documents provided to the MSRB shall be accompanied by identifying information as prescribed by the MSRB.

ARTICLE IV TERMINATION, AMENDMENT AND ENFORCEMENT

Section 4.1. **Termination.** (a) The City's obligations under this Undertaking with respect to either Series of the Bonds shall terminate upon the legal defeasance pursuant to the Bond Ordinance, redemption or payment in full of all of such Series of the Bonds. The City shall give notice of any such termination (A) beginning July 1, 2009, to the MSRB in an electronic format as prescribed by the MSRB and (B) prior to July 1, 2009, to the SID, if any, and to either each NRMSIR or the MSRB.

(b) This Undertaking, or any provision hereof, shall be null and void in the event that the City (1) delivers to the Trustee an opinion of Securities Counsel, addressed to the City and the Trustee, to the effect that those portions of the Rule which require the provisions of this Undertaking, or any of such provisions, do or no longer apply to the Bonds, whether because such portions of the Rule are invalid, have been repealed or otherwise, as shall be specified in such opinion, and (2) delivers notice to such effect (A) beginning July 1, 2009, to the MSRB in an electronic format as prescribed by the MSRB and (B) prior to July 1, 2009, to the SID, if any, and to either each NRMSIR or the MSRB.

Section 4.2. **Amendment.** (a) This Undertaking may be amended and any provision of this Undertaking may be waived, without the consent of the Holders or Beneficial Owners, *except* to the extent required pursuant to subclause 4(ii) below, if all of the following conditions are satisfied: (1) such amendment or waiver is made in connection with a change in circumstances that arises from a change in legal (including regulatory) requirements, a change in law (including rules or regulations) or in interpretations thereof, or a change in the identity, nature or status of the City or the System or the type of business conducted thereby; (2) this Undertaking as so amended or waived could have complied with the requirements of the Rule as of the date written below, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; (3) the City shall have delivered to the Trustee an opinion of Securities Counsel, addressed to the City and the Trustee, to the same effect as set forth in clause (2) above; (4) either (i) a party unaffiliated with the City (such as the

Trustee or bond counsel), acceptable to the City and the Trustee, has determined that the amendment or waiver does not materially impair the interests of the Beneficial Owners or (ii) the Holders consent to the amendment or waiver of this Undertaking pursuant to the same procedures as are required for amendments to the Bond Ordinance with consent of Holders; and (5) the City shall have delivered copies of such amendment or waiver (A) beginning July 1, 2009, to the MSRB in an electronic format as prescribed by the MSRB and (B) prior to July 1, 2009, to the SID, if any, and to either each NRMSIR or the MSRB.

(b) In addition to clause (a) above, the City may amend this Undertaking, and any provision of this Undertaking may be waived, if the Trustee shall have received an opinion of Securities Counsel, addressed to the city and the Trustee, to the effect that the adoption and the terms of such amendment or waiver would not, in and of themselves, cause the undertakings herein to violate the Rule, taking into account any subsequent change in or official interpretation of the Rule.

(c) To the extent any amendment to this Undertaking results in a change in the type of financial information or operating data provided pursuant to this Undertaking, the first Annual Financial Information provided thereafter shall include a narrative explanation of the reasons for the change and the impact of the change.

(d) If a change is made to the basis on which financial statements are prepared, the Annual Financial Information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. Such comparison shall include a qualitative and, to the extent reasonably feasible, quantitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information.

(e) This Undertaking may be amended as provided herein by action of the City's Finance Director.

Section 4.3. **Benefit; Enforcement.** (a) The provisions of this Undertaking shall inure solely to the benefit of the Holders and the Beneficial Owners from time to time.

(b) *Except* as provided in this subsection (b), the Undertaking shall create no rights in any other person or entity. The obligation of the City to comply with the provisions of this Undertaking shall be enforceable by any Beneficial Owner of Outstanding Bonds and, in addition, by the Trustee on behalf of the Holders of Outstanding Bonds.

(c) The right to enforce the provisions of this Undertaking shall be limited to a right, by action in mandamus or for specific performance, to compel performance of the City's obligations under this Undertaking. Any failure by the City to perform in

accordance with this Undertaking shall not constitute a default or an event of default under the Bond Ordinance, and the rights and remedies provided by the Bond Ordinance upon the occurrence of a default or an event of default shall not apply to any such failure.

**ARTICLE V
MISCELLANEOUS**

Section 5.1. **Governing Law.** This Undertaking shall be construed and interpreted in accordance with the laws of the State, and any suits and actions arising out of this Undertaking shall be instituted in a court of competent jurisdiction in the State; *provided*, that to the extent this Undertaking addresses matters of federal securities laws, including the Rule, this Undertaking shall be construed in accordance with such federal securities laws and official interpretations thereof.

IN WITNESS WHEREOF, the City has executed this Undertaking by its duly authorized representative as of the date written below.

CITY OF DETROIT

By: _____

Its: _____

Dated: _____, 2009